



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173727

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established FS overpayments against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS as a household of 1 from at least September 1, 2011-February 28, 2015.
3. By a series of notices dated March 23, 2016, the agency informed petitioner that she was overpaid FS. Claim # [REDACTED] references the period of 9/1/11-8/31/12 in the amount of \$2130 due to client error for failing to report accurate household members. Claim # [REDACTED] references the

period of 9/1/12-8/31/13 in the amount of \$1996 due to client error in failing to report accurate household members. Claim # [REDACTED] references the period of 9/1/13-2/28/14 in the amount of \$1032 due to client error in failing to report accurate household members. Claim # [REDACTED] references the period of 3/6/14-2/28/15 in the amount of \$1697 due to client error in failing to report accurate household members. Exhibit 5.

DISCUSSION

The agency is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). The agency asserts that petitioner was overpaid FS because her husband was living with her and his income should have been included in the household budget to determine FS eligibility/allotments.

Federal regulations provide that spouses must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified. 7 C.F.R. §273.1(b)(i). This is echoed in the Wisconsin FS policy that provides:

To determine who is non-financially eligible for FoodShare, you must start with all household members.

H - Households

Households consist of all persons living in, or temporarily absent from, the same Residence. It is important to enter all household members into CWW to ensure that the correct eligibility determination is made in CARES.

...

U - Food Units

One or more persons who live in the same household and purchase and prepare food together for home consumption, or individuals who must be included in the same food unit because of relationship rules (3.3.1.3).

FS Handbook §3.3.1.1_, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or stepparents and their children under the age of 22, **and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

FS Handbook §3.3.1.3.

And finally,

Include in the food unit an individual temporarily absent from the food unit when the expected absence is no longer than two full consecutive calendar months past the month of departure.

FS Handbook §3.2.1.2.

Petitioner's testimony was that she and her husband were married in 2003 and had marital problems beginning in approximately 2008 and then off and on again. Petitioner's timeframes were somewhat inconsistent, but the gist of her testimony was that he would leave her off and on, but that he would come back to her every 2 weeks.

In the end, I conclude that the overpayment was determined correctly. I can believe that the couple had marital trouble and that there may have been times when petitioner's husband did not come home at night. However, if a person signs up for public assistance alleging that her husband does not live with her, then he actually better not live with her. All of the records provided by the agency show the husband to use the same address as petitioner, they were on leases together, they were evicted from the same residence together per CCAP, his employer used the same address as petitioner, [REDACTED] about their 12 years of marriage together, and credit reports showing the same address. And even if he was gone as she described, he still does not meet the temporary absence provision cited above. Further, it appears that only once the husband lost his source of income, that petitioner reported him in the home.

I have reviewed the agency's calculations and can find no error in the amounts calculated, nor were any errors raised by petitioner to show differently. Accordingly, I am upholding the overpayments. Petitioner can contact the Public Assistance Collection Unit to set up a repayment plan, or if she is currently receiving FS, the overpayment may be taken from any current benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has established FS overpayments against the petitioner for Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED] and Claim # [REDACTED]

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

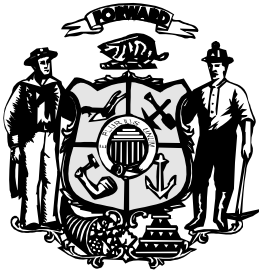
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 21, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability